



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2016-0493; FRL-9953-04-Region 10]

Approval and Promulgation of Implementation Plans; Washington: General Regulations for Air Pollution Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In reviewing past State Implementation Plan (SIP) actions, the Washington Department of Ecology (Ecology) and the Environmental Protection Agency (EPA) discovered minor typographical errors related to the EPA's previous approvals of Chapter 173-400 Washington Administrative Code, *General Regulations for Air Pollution Sources*. The EPA is taking direct final action to correct these errors. This direct final action makes no substantive changes to the SIP and imposes no new requirements.

DATES: This rule is effective on [Insert date 60 days after date of publication in the Federal Register], without further notice, unless the EPA receives adverse comment by [Insert date 30 days after date of publication in the Federal Register]. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2016-0493 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW-150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; telephone number: (206) 553-0256; email address: hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

I. Introduction

In final actions published October 3, 2014 (79 FR 59653) and April 29, 2015 (80 FR 23721), the EPA approved Washington Administrative Code (WAC) 173-400-110 *New Source Review (NSR) for Sources and Portable Sources* and WAC 173-400-112 *Requirements for New Sources in Nonattainment Areas - Review for Compliance with Regulations* with certain exceptions. One of the listed exceptions was “the part of 400-110(4)(e)(f)(i)” related to toxic air pollutants. The EPA notes that “400-110(4)(e)(f)(i)” does not exist under Chapter 173-400 WAC. The correct citation is “400-110(4)(f)(i).” Similarly, both final approvals contained regulatory text under 40 CFR part 52.2470(c) which listed an exception for WAC 173-400-112(8). WAC 173-400-112(8) does not exist in the version of Chapter 173-400 WAC adopted

by Ecology on November 28, 2012, which the EPA reviewed and approved. This exception, related to toxic air pollutants, was a holdover from a previous approval action (60 FR 28726, June 2, 1995). This exception was inadvertently copied as part of 40 CFR 52.2470(c) *Table 2 – Additional Regulations Approved for Washington Department of Ecology (Ecology) Direct Jurisdiction*. Both typographical errors were also inadvertently copied in the regulatory text of a November 17, 2015 final approval for the Benton Clean Air Agency, under 40 CFR 52.2470(c) *Table 4 – Additional Regulations Approved for the Benton Clean Air Agency (BCAA) Jurisdiction*, which generally relies on the regulations contained in Chapter 173-400 WAC (80 FR 71695).

II. Final Action

The EPA has determined that the typographical errors referenced above should be corrected at this time. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comment. However, in the “Proposed Rules” section of this **Federal Register**, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [**Insert date 60 days after date of publication in the Federal Register**] without further notice unless the EPA receives adverse comment by [**Insert date 30 days after date of publication in the Federal Register**]. If the EPA receives adverse comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule

and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is correcting minor typographical errors related to the incorporation by reference contained in 40 CFR 52.2470(c) *Table 2 – Additional Regulations Approved for Washington Department of Ecology (Ecology) Direct Jurisdiction* and *Table 4 – Additional Regulations Approved for the Benton Clean Air Agency (BCAA) Jurisdiction*. These materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 10 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹ 62 FR 27968 (May 22, 1997).

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of

judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting, and Recordkeeping requirements.

Dated: September 14, 2016.

Dennis J. McLerran,
Regional Administrator,
Region 10.

For the reasons stated above, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW – Washington

2. In § 52.2470, amend paragraph (c) by:

- a. In Table 2 – Additional Regulations Approved for Washington Department of Ecology (Ecology) Direct Jurisdiction, revising entries 173-400-110 and 173-400-112; and
- b. In Table 4 – Additional Regulations Approved for the Benton Clean Air Agency (BCAA) Jurisdiction, revising entries 173-400-110 and 173-400-112.

The revisions read as follows:

§ 52.2470 Identification of plan.

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(c) * * *

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation), and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173-400-700, 173-405-012, 173-410-012, and 173-415-012]

State citation	Title/subject	State effective date	EPA approval date	Explanations
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Washington Administrative Code, Chapter 173-400 -- General Regulations for Air Pollution Sources				
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173-400-110	New Source Review (NSR) for Sources and Portable Sources	12/29/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	<p>Except: 173-400-110(1)(c)(ii)(C); 173-400-110(1)(e); 173-400-110(2)(d); The part of WAC 173-400-110(4)(b)(vi) that says,</p> <ul style="list-style-type: none"> • “not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,”; <p>The part of 400-110(4)(e)(iii) that says,</p> <ul style="list-style-type: none"> • “where toxic air pollutants as defined in chapter 173-460 WAC are not emitted”; <p>The part of 400-110(4)(f)(i) that says,</p> <ul style="list-style-type: none"> • “that are not toxic air pollutants listed in chapter 173-460 WAC”; <p>The part of 400-110(4)(h)(xviii) that says,</p> <ul style="list-style-type: none"> • “, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted”; <p>The part of 400-110(4)(h)(xxxiii) that says,</p> <ul style="list-style-type: none"> • “where no toxic air pollutants as listed under

				<p>chapter 173-460 WAC are emitted”;</p> <p>The part of 400-110(4)(h)(xxxiv) that says,</p> <ul style="list-style-type: none"> • “, or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC”; <p>The part of 400-110(4)(h)(xxxv) that says,</p> <ul style="list-style-type: none"> • “or $\leq 1\%$ (by weight) toxic air pollutants”; <p>The part of 400-110(4)(h)(xxxvi) that says,</p> <ul style="list-style-type: none"> • “or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC”; <p>400-110(4)(h)(xl) , second sentence;</p> <p>The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.</p>
* * * *				
173-400-112	Requirements for New Sources in Nonattainment Areas -- Review for Compliance with Regulations	12/29/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
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**TABLE 4—ADDITIONAL REGULATIONS APPROVED FOR THE BENTON CLEAN AIR AGENCY
(BCAA) JURISDICTION**

[Applicable in Benton County, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and facilities subject to the applicability sections of WAC 173-400-700, 173-405-012, 173-410-012, and 173-415-012]

State / local citation	Title/subject	State / local effective date	EPA approval date	Explanations
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Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173-400 -- General Regulations for Air Pollution Sources				
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173-400-110	New Source Review (NSR) for Sources and Portable Sources	12/29/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	Except: 173-400-110(1)(c)(ii)(C); 173-400-110(1)(e); 173-400-110(2)(d); The part of WAC 173-400-110(4)(b)(vi) that says, <ul style="list-style-type: none"> “not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,”; The part of 400-110(4)(e)(iii) that says, <ul style="list-style-type: none"> “where toxic air pollutants as defined in chapter 173-460 WAC are not emitted”; The part of 400-

				<p>110(4)(f)(i) that says,</p> <ul style="list-style-type: none"> • “that are not toxic air pollutants listed in chapter 173-460 WAC”; <p>The part of 400-110 (4)(h)(xviii) that says,</p> <ul style="list-style-type: none"> • “, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted”; <p>The part of 400-110 (4)(h)(xxxiii) that says,</p> <ul style="list-style-type: none"> • “where no toxic air pollutants as listed under chapter 173-460 WAC are emitted”; <p>The part of 400-110(4)(h)(xxxiv) that says,</p> <ul style="list-style-type: none"> • “, or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC”; <p>The part of 400-110(4)(h)(xxxv) that says,</p> <ul style="list-style-type: none"> • “or $\leq 1\%$ (by weight) toxic air pollutants”; <p>The part of 400-110(4)(h)(xxxvi) that says,</p> <ul style="list-style-type: none"> • “or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC”; <p>400-110(4)(h)(xl) , second sentence;</p>
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				The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.
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173-400-112	Requirements for New Sources in Nonattainment Areas - - Review for Compliance with Regulations	12/29/12	[Insert <u>Federal Register</u> publication date], [Insert <u>Federal Register</u> citation]	
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[FR Doc. 2016-23298 Filed: 9/28/2016 8:45 am; Publication Date: 9/29/2016]